

NTSB Order No. EA-4942

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of January, 2002

Respondent .

Docket SE-16272

Respondent, pro se, has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued at the conclusion of an evidentiary hearing held on June 12, 2001.¹ By that decision, the law judge affirmed the Administrator's emergency order of revocation² of respondent's

²Respondent waived the expedited procedures applicable to an emergency order of revocation.

mechanic certificate for violating section 65.23(b), 14 CFR Part 65, of the Federal Aviation Regulations (FAR).³ As discussed below, respondent's appeal is denied.⁴

The Administrator's order alleges as follows:

1. You are now, and at all times mentioned in this document were, the holder of Mechanic Certificate No. 439172683, with Airframe and Powerplant ratings.
2. At all times mentioned in this document, including February 16, 2000, you were employed by Delta Air Lines as a mechanic.
3. The performance of aircraft maintenance or preventive maintenance duties is a safety-sensitive function under 14 CFR pt. 121, app. I, § III.E of the FAA's regulation.
4. As the holder of a FAA mechanic certificate exercising the privileges of that certificate, you were required to submit to random drug testing under Delta Air Lines' Antidrug Program in accordance with 14 CFR § 65.23 and 14 CFR pt. 121, app. I §§ III.E and V.C.
5. On or about December 23, 1999, you were selected for random drug testing, which was to be completed during the first quarter of calendar year 2000.
6. On or about February 16, 2000, Michael A. Putnam notified you to report for drug testing at Delta Air Lines, Dept. 953, Dallas/Ft. Worth International

³FAR § 65.23 provides, in pertinent part, as follows:

§ 65.23 Refusal to submit to a drug or alcohol test.

* * * * *

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for--

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.

⁴Respondent filed a brief on appeal and the Administrator filed a reply.

Airport.

7. On or about February 16, 2000, you reported to the collection site as ordered and provided a urine sample to the collector, Michael A. Putnam.

a. In your presence, Mr. Putnam placed the specimen into two bottles and sealed both bottles with tamper-evident seals on each of which was printed Specimen ID No. 06842293.

b. You initiated [sic] and dated the seals on the two specimen bottles containing the specimen you provided to Mr. Putnam.

c. In Mr. Putnam's presence, you signed the Federal Drug Testing Custody and Control Form, upon which was printed Specimen ID No. 06842293, stating:

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on the form and on the label affixed to each specimen bottle is correct.

8. On or about February 22, 2000, LabOne's analysis confirmed the presence of pyridine in your urine specimen, Specimen ID No. 06842293, and reported "No Test."

9. On or about February 24, 2000, William H. Whaley, M.D. (Delta Air Lines' Medical Review Officer), verified the presence of pyridine in your urine specimen and reported an adulterated specimen for Specimen ID No. 06842293 (Philip J. Frank).

10. At all times mentioned herein, 14 CFR pt. 121, app. I, § II, provides that refusal to submit to a drug test means that an individual failed to provide a urine sample as required by 49 CFR pt. 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with 14 CFR pt. 121, app. I, or engaged in conduct that clearly obstructed the testing process.

11. By adulterating your specimen, as described above, you engaged in conduct that clearly obstructed the testing process under 14 CFR pt. 121, app. I, § II.

12. Because under 14 CFR pt. 121, app. I, § II, you

engaged in conduct that clearly obstructed the testing process, your conduct constitutes a refusal to submit to a drug test required under 14 CFR pt. 121, app. I, § V.C.

The law judge upheld the revocation order in its entirety, finding that the Administrator proved the allegations by a preponderance of the evidence. He found the testimony of the Administrator's six witnesses to be credible and convincing as a means of verifying the testing process and chain of custody.

On appeal, respondent claims that his response to the Administrator's discovery request and interrogatories were not adequately considered at the hearing, most specifically his argument that various labs, including LabOne (the lab where his specimen was tested), had in the recent past been accused, albeit in circumstances unrelated to his case, of engaging in "improper conduct" and, that, given the shadow of these accusations, his test results should not be viewed as accurate. Respondent further argues against the reliability of the testimony provided by the Administrator's expert witnesses.

At the hearing, the Administrator offered the testimony of the collector who received respondent's urine sample on February 16, 2000. He described the procedures that were followed at the collection site, including his actions in splitting the sample, sealing and labeling the bottles, and packaging the specimens for shipment.⁵

Dr. Lance Presley, Senior Vice President of Toxicology at

⁵Respondent contests neither the testing procedures nor the chain of custody. Tr. at 24, 51.

LabOne, then testified regarding procedures the lab follows routinely when testing specimens and, specifically, those that were used to test respondent's specimen, based on the records of that analysis.⁶ He also discussed the lab's certification under the National Laboratory Certification Program, the initial screening process of specimens, the calibration of machines, and the gas chromatograph mass spectrometer test, in both general terms and those specific to respondent's sample. He explained that respondent's sample tested positive for pyridine, a component of pyridinium chlorochromate, and that this test was performed twice. Dr. Presley further stated that pyridine is a substance that does not occur naturally in the human body, is not normally found in human urine, and is commonly used as an adulterant to mask drugs.

Dr. William Whaley, the Medical Review Officer for Delta at the time of respondent's drug screening, testified regarding his review of respondent's test results, explained how pyridine can be utilized as an adulterant, and discussed the high reliability of the tests performed on respondent's specimen. Lastly, Dr. David Kuntz, an experienced forensic toxicologist, reviewed the documentation of tests performed on the specimen and opined that the tests were forensically valid. He described the tests,

⁶Respondent argues that Dr. Presley's testimony should be discounted because LabOne did not employ him at the time the specimen was tested. Dr. Presley testified, however, to the detailed records of the tests performed, the meaning of the results obtained, and the general testing procedures that are in place at the lab. Respondent presented no evidence to contradict Dr. Presley's testimony or to cast doubt on its reliability.

explained how pyridine is detected, and discussed adulterants that contain it. He also explained the differences between validity testing (the testing criticized in the documents submitted by respondent with his discovery responses) and the testing that had been performed on respondent's specimen. He noted that they are completely different tests.

On appeal, respondent identifies no issue warranting a reversal of the initial decision. At the hearing, he testified in his own defense, stating basically that he had never used drugs, did not adulterate his urine specimen, and had no idea how it could have become adulterated. He speculated that the lab must have made an error, but offered no evidence or other testimony. He complains now that the law judge did not consider documents he included in his response to the Administrator's interrogatories.⁷ We disagree. The law judge repeatedly asked the witnesses about any problems Delta may have had with LabOne, and testimony was elicited from two witnesses regarding validity testing and how it differed from the type of testing performed on

⁷These documents, which respondent also attached to his appeal brief, are extraneous and irrelevant to the issue in this appeal, namely, whether the law judge justifiably determined that a preponderance of the evidence before him supported the Administrator's charge that respondent adulterated his urine specimen. None of the documents he attached has any bearing on that issue. He did not supply at hearing or otherwise any information that would tend to show that his sample was tested improperly or that the test produced erroneous results. Notably absent is evidence of any duplicate tests performed on the second half of the split sample. It appears that the remaining sample remains untested. When the law judge queried respondent regarding testing of the split sample, respondent said that he never asked about it. Tr. at 24. Dr. Presley testified that the second half of the sample was still preserved at LabOne. Tr. at

respondent's specimen.

In sum, we see no basis to disturb the law judge's decision, which is amply supported by the preponderant evidence. As such, revocation of respondent's airman certificate is warranted. See Administrator v. Lybyer, NTSB Order No. EA-4822 (2000); Administrator v. Krumpter, NTSB Order No. EA-4724 (1998).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The emergency order of revocation is affirmed.

BLAKEY, Chairman, CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.